

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2377 & 2378/Chny/2018

निर्धारण वर्ष /Assessment Years :2005-06 & 2011-12

Late Shri Dasari Narayana Rao,  
Represented by  
L/H Shri Dasari Arun Kumar,  
900A, Road No.46, Jublie Hills,  
Film Nagar, Hyderabad – 500 033.

v. The Income Tax Officer (OSD) /  
The Deputy Commissioner of  
Income Tax,  
Non-Corporate Circle 20  
Chennai.

PAN : AADPN 2804 Q

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. B. Ramakrishnan, CA

प्रत्यर्थीकीओरसे/Respondent by : Shri R. Clement Ramesh Kumar, Addl.CIT

सुनवाईकीतारीख/Date of Hearing : 14.11.2018

घोषणाकीतारीख/Date of Pronouncement : 16.11.2018

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

I.T.A. No.2377/Chny/2018 is filed against the order of the CIT(Appeals) confirming the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2005-06, whereas, I.T.A. No.2378/Chny/2018 is filed against the order of the CIT(Appeals) for regular assessment for

assessment year 2011-12. Therefore, we heard both the appeals of the assessee together and disposing of the same by this common order.

Let's first take I.T.A. No.2377/Chny/2018.

2. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the assessee claimed deduction under Section 80G of the Act and also remission of liability under Section 41(1) of the Act in respect of Shri V. Venkatarao. In fact, according to the Ld. representative, the assessee claimed deduction under Section 80G of the Act to the extent of ₹1,00,000/-. The assessee could not produce receipt in respect of the payment made to the extent of ₹10,000/-, therefore, the Assessing Officer restricted the disallowance to ₹50,000/-. In respect of remission of liability, according to the Ld. representative, the Assessing Officer found that it could not be ruled out the possibility of being a trading liability, therefore, it is the income of the assessee under Section 41(1) of the Act. According to the Ld. representative, the assessee has furnished entire details and claimed remission under Section 41(1) of the Act as deduction. According to the Ld. representative, mere claim after furnishing entire details cannot be construed as

furnishing inaccurate particulars of income or concealing any part of income of the assessee, therefore, the CIT(Appeals) is not justified in confirming the penalty levied by the Assessing Officer.

3. We heard Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative also. The assessee claimed deduction to the extent of ₹1,00,000/- under Section 80G of the Act and also deduction in respect of remission of liability with regard to one Shri V. Venkatarao. This Tribunal is of the considered opinion that making mere claim by furnishing all particulars to the Assessing Officer cannot be construed to be concealment of income or furnishing inaccurate particulars of income. As held by Apex Court in the case of CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158, a mere claim in the return of income cannot be construed to be concealment of income or furnishing inaccurate particulars of income. In view of this judgment of Apex Court, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the penalty levied by the Assessing Officer is deleted.

4. Now coming to the assessee's appeal in I.T.A. No.2378/Chny/2018.

5. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the first ground of appeal is with regard to interest claimed by the assessee to the extent of ₹8,10,000/-. The Ld. representative, during the course of hearing, submitted that he is not pressing this ground. The Ld. representative also made an endorsement to this effect in the grounds of appeal filed before this Tribunal. In view of the above, the ground with regard to claim towards interest is dismissed as not pressed.

6. Now coming to addition of ₹3,58,00,000/-, ₹2,90,00,000/- and ₹68,00,000/-, the assessee has filed additional evidence before the CIT(Appeals). The assessee has filed a copy of acknowledgement as proof of filing additional evidence before the CIT(Appeals). In spite of that, the CIT(Appeals) has not considered the additional evidence. This Tribunal is of the considered opinion that when the assessee has filed additional evidence, it is for the CIT(Appeals) to examine the same and decide the case in one way or other or to forward the additional evidence to the Assessing Officer and call for his remand report. Unfortunately, the CIT(Appeals) has not exercised his option in respect of the additional evidence filed by the assessee. In those circumstances,

this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer in the interest of justice. Accordingly, orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the additional material filed by the assessee and other material that may be filed before the Assessing Officer and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the assessee's appeal in I.T.A. No.2377/Chny/18 is allowed and the appeal in I.T.A. No.2378/Chny/2018 is partly allowed for statistical purposes.

Order pronounced in the court on 16<sup>th</sup> November, 2018 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member  
चेन्नई/Chennai,

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

दिनांक/Dated, the 16<sup>th</sup> November, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-14, Chennai-34
4. Principal CIT-10, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.